

LIFESTYLE COMMUNITIES

vs.

CITY OF WORTHINGTON

Deposition of

Jason Sudy

December 19, 2023



PRI COURT
REPORTING

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1 IN THE UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO
 EASTERN DIVISION

3 LIFESTYLE COMMUNITIES,)
4 LTD., ET AL.,)
)
5 Plaintiffs,)
)
6 vs.) Case No.
) 2:22-cv-1775
7 CITY OF WORTHINGTON,)
8 OHIO,)
)
)
9 Defendant.)

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DEPOSITION

of JASON SUDY

Taken at the offices of
Vorys Sater Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215

on December 19, 2023, at 1:11 p.m.

Reported by: Julia Lamb, RPR, CRR

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STIPULATIONS

It is stipulated by and between
counsel for the respective parties that the
deposition of JASON SUDY, the witness herein,
called by the Defendant under the applicable
Rules of Federal Civil Court Procedure, may be
taken at this time by the stenographic court
reporter and notary public by agreement of
counsel; that said deposition may be reduced to
writing stenographically by the court reporter,
whose notes thereafter may be transcribed
outside the presence of the witness; and that
the proof of the official character and
qualification of the notary is waived.

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1 JASON SUDY

2 being first duly sworn, as hereinafter certified,
3 deposes and says as follows:

4 CROSS-EXAMINATION

5 BY MR. ASHRAWI:

6 Q. Can you please state and spell your name
7 for the record.

8 A. Sure. It's Jason Sudy. J-A-S-O-N,
9 S-U-D-Y.

10 Q. Mr. Sudy, have you ever been deposed
11 before?

12 A. I have not.

13 Q. I'm sure your counsel gave you a brief
14 rundown of the deposition process, but I'm going
15 to go over a few ground rules that will help
16 this process move quickly and efficiently. So
17 first ground rule is that we both speak loudly
18 and clearly. As you can see, Julia is taking
19 down a transcript of the record, and we want
20 that as clear as possible. Avoid none verbal
21 responses such as head nods and uh-huhs and
22 huh-uhs; so yeses or nos to my questions.

23 If you don't understand one of my
24 questions, just let me know so I can rephrase.

1 I don't want you answering a question that I did
2 not ask. And then if you need a break, feel
3 free to ask for one. The only thing I ask is
4 that if there's a pending question you answer it
5 first. Are those all acceptable to you?

6 A. Yes.

7 Q. Do you understand that you're here to
8 testify in your capacity as an expert in the
9 federal lawsuit that was filed by Lifestyle
10 Communities and Worthington Campus, LLC?

11 A. I do.

12 Q. And you understand that the lawsuit
13 centers around a property in worthington that is
14 commonly referred to as the United Methodist
15 Children's Home or the UMCH property?

16 A. Yes.

17 Q. So if I refer to the property, we're
18 talking about that property. Are you
19 comfortable with that?

20 A. Understood.

21 Q. Okay. What did you do to prepare for
22 this deposition?

23 A. As I outlined in my report, I reviewed a
24 number of documents, including the 2005

1 strategic plan, the 2014 focus area plan
2 update specifically for this property. In
3 addition, I reviewed meeting minutes for the
4 planning commission/ARB, meeting minutes for
5 city council. I read the staff reports for both
6 of those. I viewed the video as well for the
7 planning commission/ARB.

8 Q. Let's do this real quick.

9 A. And I visited the site.

10 Q. Thank you. I'm going to hand you what
11 we'll mark as Exhibit 139.

12 (Discussion off the record.)

13 --0--

14 (Deposition Exhibit 140 marked.)

15 --0--

16 BY MR. ASHRAWI:

17 Q. I'm going to hand you what we'll mark as
18 Exhibit 140. I'll represent to you, Mr. Sudy,
19 that this is a copy of the expert report that
20 you authored dated June 15, 2023, but if you can
21 look through it and confirm that is, in fact,
22 the case, and that it's a true and accurate copy
23 for the record.

24 A. It appears to be so.

1 Q. You just listed off a number of things
2 you did and materials you reviewed that were
3 included in your report as having been reviewed
4 for purposes of the report. I just want to
5 confirm that that's the same answer to my
6 question, which is what did you do to prepare
7 specifically for this deposition?

8 MR. INGRAM: Objection to form.

9 You may answer.

10 A. I spoke to counsel, Christopher
11 specifically. I re-reviewed my report, relooked
12 at the meeting minutes, the staff report,
13 re-reviewed -- is that right? -- the council --
14 I'm sorry, the planning commission/ARB video,
15 and I visited the site again.

16 Q. So I got that you reviewed your report?

17 A. Yes.

18 Q. Meeting minutes?

19 A. Correct.

20 Q. You watched the video from the ARB?

21 A. Correct. Yeah, planning commission
22 technically.

23 Q. Planning commission video.

24 Any other material?

1 A. Yes. The relevant sections of the
2 zoning code, the 2014 update that was the focus
3 area update, as well as the -- I believe it was
4 an ordinance to amend. I don't think it was a
5 resolution. The piece of legislation to amend
6 that section.

7 Q. Any other material that you can think of
8 that you reviewed?

9 A. I don't recall as I'm sitting here.

10 Q. Other than your counsel did you speak
11 with anyone in preparation for this deposition?

12 A. No.

13 Q. I notice in your report that you have
14 not in the last four years testified in any
15 case. Is that accurate?

16 A. Yes, that is accurate.

17 Q. Have you testified ever in your career
18 as an expert?

19 A. I testify all the time as an expert in
20 front of planning commissions, councils, and ARB
21 boards, that type of thing.

22 Q. Let me ask a different question. Have
23 you ever been recognized by a court of law as an
24 expert in anything?

1 A. No.

2 MR. INGRAM: Objection. Calls for legal
3 conclusion.

4 Q. Let's go over your educational
5 background. Can you starting with -- we'll go
6 your undergraduate degree. Can you walk me
7 through your educational background.

8 A. Sure. I received a degree in political
9 science, a minor in theater and maybe a minor in
10 English -- I can't recall if that's accurate --
11 from Case Western Reserve University in
12 Cleveland.

13 Q. Do you have postgraduate degrees?

14 A. I do.

15 Q. In what?

16 A. I have a master's in city and regional
17 planning from Ohio State.

18 Q. Do you have any degrees or formal
19 education beyond that?

20 A. I do not.

21 Q. Do you hold any licenses?

22 A. I do not.

23 Q. Did you ever hold any professional
24 licenses?

1 A. I used to have the AICP.

2 Q. And for the record, what is the AICP?

3 A. It is the certification for planning.

4 American Institute of Certified Planners, I
5 believe.

6 Q. When did you have that certification?

7 A. I cannot recall.

8 Q. How long ago did it lapse or did you
9 terminate it?

10 MR. INGRAM: Objection to form. Assumes
11 facts not in evidence.

12 You can answer.

13 A. Ten years ago. I can't recall exactly
14 as I'm sitting here.

15 Q. Is there any -- well, let me ask this
16 question. Did the certification -- do you no
17 longer have the certification because you didn't
18 want it anymore, or was it terminated for any
19 particular reason, or why did it come to an end?

20 MR. INGRAM: Objection to form.

21 A. I decided to stop renewing it. As a
22 long-time practicing planner with a wide variety
23 of experience both teaching, and attending, and
24 speaking at conferences, I didn't find it was

1 very beneficial to me.

2 Q. Does the certification -- does having
3 the certification allow you to do anything that
4 you would otherwise not be permitted to do as a
5 planner?

6 MR. INGRAM: Objection to form.

7 A. Not that I have encountered.

8 Q. Do you maintain any informal annual
9 training or continuing education for planning
10 purposes?

11 MR. INGRAM: Objection to form.

12 A. Yes. I attend -- every year I attend
13 local and/or regional planning conferences. I
14 also attend a number of national planning
15 conferences on a varied basis, averaging I would
16 say probably one to one and a half a year. I
17 speak at a lot of conferences, and I also still
18 occasionally do teach at Ohio State, which back
19 then would have been considered a certification
20 element, not sure if that still is since I
21 haven't been participating.

22 Q. When was the last time you taught at
23 Ohio State?

24 A. It was five years ago when I was at --

1 five or -- shoot. Hold on. I'm sorry, I'm
2 going to have to think about this based on the
3 COVID time. It confuses me a bit.

4 It was, I guess, approximately six years
5 ago when I taught there as an actual employed
6 member of Ohio State's auxiliary faculty. That
7 being said, in the last three years I've taught
8 numerous classes there, individual classes,
9 where I've been asked to come speak to
10 individual classes.

11 Q. So in the last three years you have not
12 been employed --

13 A. Correct.

14 Q. -- as a faculty member but you guest
15 lecture?

16 A. Correct.

17 MR. INGRAM: Mr. Sudy, make sure you let
18 him --

19 THE WITNESS: Correct.

20 MR. INGRAM: -- finish asking --

21 THE WITNESS: Yes.

22 MR. INGRAM: -- his question before you
23 answer.

24 THE WITNESS: Absolutely.

1 BY MR. ASHRAWI:

2 Q. In the last three years when you've
3 lectured at Ohio State, what have been the
4 topics of those lectures?

5 A. Transportation and mobility, land use
6 and mobility, land use and technology. That's
7 probably the general sense. I can't recall
8 specifically at this point.

9 Q. Is there any particular reason you are
10 no longer on faculty with OSU?

11 A. Yes. And I would like to clarify I was
12 part of -- we had a shifting title. At the end
13 it was called auxiliary faculty. Whatever that
14 means. So it used to be adjunct and auxiliary.
15 They kind of shifted us around. That being
16 said, it doesn't pay very well, and it takes a
17 lot of time, and it became a situation where it
18 was just a little too taxing on my schedule.

19 Q. Any other annual continuing education or
20 ongoing presentations you make?

21 MR. INGRAM: Objection to form.

22 A. Maybe -- I guess in addition to the
23 conferences? Is that what you're asking?

24 Q. Yes. Anything we have not discussed

1 already.

2 A. I don't think so.

3 Q. Let's go through your work history. Did
4 you work in any capacity between graduating from
5 Case Western and beginning your master's at Ohio
6 State?

7 A. Yes. A number of jobs, none of which
8 would be related to city planning.

9 Q. Let's start then after you completed
10 your master's. Where did you first become
11 employed?

12 A. I worked during my master's at -- in
13 several nonprofit city organizations as part of
14 the tuition reimbursement internship process.
15 Nonprofit might not be the exact right term for
16 all of them. I worked for the Greater Linden
17 Corporation -- Greater Linden Development
18 Corporation, and the North Linden Area
19 Commission, and I interned with the City of
20 Columbus implementing something they called the
21 UIRF fund, which I'm not sure still exists, but
22 it was an early infrastructure fund. Then after
23 graduation I worked for a firm called MSI which
24 is now known as MKSK, and I worked there for

1 quite a long time.

2 Q. Do you recall how many years?

3 A. It was about 14 years.

4 Q. And what was your position or positions
5 with MKSK beginning with the earliest
6 position --

7 A. Sure.

8 Q. -- if that changed?

9 A. I began as an entry-level planner, and I
10 did a lot of GIS mapping and data analysis.
11 Then I progressed through sort of the planning
12 ranks. It's a small organization so we didn't
13 have a lot of hierarchy within that structure.
14 Became more senior planner, project manager,
15 went on to have several other roles in the
16 company, including the director of business
17 development for the company which at that point
18 was -- had expanded to three offices. And when
19 I was -- what was the title? Associate
20 principal I believe was where I ended there
21 which was again sort of next step up toward
22 being a partial owner of the company.
23 Q. Do you recall what years those 14 years
24 were? 1998 to 2012?

1 A. That's it.

2 Q. So after that you went to Side Street
3 Planning?

4 A. Correct. I started my own firm.

5 Q. Before we get to Side Street Planning,
6 what clients did you work with at MKSK
7 specifically that you recall?

8 A. There were many clients, and I will give
9 you the few that I do recall, noting that there
10 are many more that I don't recall, certainly.

11 Q. Sure.

12 A. Most notable for site planning I was the
13 contracted city planner for the City of
14 Hilliard. City of Hilliard at that point did
15 not have their own in-house city planner so I
16 worked to review all development review
17 applications for them and represent their
18 interests from a planning standpoint at all
19 boards, commissions and council.

20 I also worked with the village of New
21 Albany in that same capacity as their contracted
22 village planner first and then became city
23 planner when they were incorporated as a city.
24 Similar kind of thing. With New Albany it was

1 even more integrated as to a continual staff
2 role where we had standing meetings where, you
3 know, we would have half to an entire day per
4 week reviewing development applications, meeting
5 with clients, meeting with applicants, going
6 through the entire review process, attending
7 architectural review board, planning commission,
8 council meetings as well as representing New
9 Albany's interests on the Rocky Fork-Blacklick
10 Accord.

11 Other clients included Nationwide Realty
12 Investors where I helped do the master plan for
13 the Arena District; City of Columbus working on
14 the initial riverfront planning projects,
15 including North Bank Park. I also worked out of
16 state in a number of different communities:
17 winter Park, California, Orlando, Florida.
18 Might not have been Orlando itself. I think it
19 was winter Park. There were a lot of clients,
20 probably over -- at least over 50 clients during
21 that time period.

22 Q. You mentioned for Hilliard and New
23 Albany specifically you were the contracted city
24 planner/village planner?

1 A. Correct.

2 Q. Were there any other clients where you
3 served in that capacity that you recall?

4 A. While I was at MKSK?

5 Q. Yes.

6 A. No.

7 Q. Okay. Now, we can turn to Side Street
8 Planning. And this is a company you founded?

9 A. Correct.

10 Q. Okay. Tell me about Side Street
11 Planning.

12 A. I went out on my own, and I really
13 was -- it was just -- it was just me mostly, and
14 then I would contract with other subconsultants
15 and/or team with other firms in order to
16 complete projects, and worked for a number of
17 clients there as well.

18 Q. Did you work for -- strike that.

19 As a -- as part of Side Street Planning
20 were you contracted as the municipal planner for
21 any particular municipality?

22 A. I worked in that capacity for Grandview,
23 Grandview Heights. I also worked in that
24 capacity for the City of Bexley.

1 Q. Any other municipalities you can think
2 of?

3 A. In that capacity?

4 Q. Correct.

5 A. No.

6 Q. How did your substantive work compare or
7 differ from what you were doing at MKSK?

8 MR. INGRAM: Objection to form.

9 A. It didn't differ substantively. I just
10 had all the responsibility.

11 Q. You were doing the same sort of planning
12 stuff. Is that accurate?

13 MR. INGRAM: Objection to form.

14 A. I would say yes.

15 Q. Is Side Street Planning an ongoing
16 entity?

17 A. It is not.

18 Q. Looks like 2016 was when -- did it close
19 in 2016?

20 A. Effectively, yeah. I closed it, yes.

21 Q. And any particular reason for that
22 closure?

23 A. I was recruited to go work for OHM.

24 Q. So you began work with OHM in 2016?

1 A. Correct.

2 Q. And you're currently with OHM. Is that
3 correct?

4 A. Correct.

5 Q. You had a stint elsewhere in between?

6 A. Correct.

7 Q. Okay. Let's take from 2016 on. I'd
8 like to know your first stint with OHM, and it
9 looks like in 2018 you worked with HDR. So for
10 the first two years, 2016 to 2018, with OHM what
11 were you doing there?

12 A. I was brought in as a principal and
13 working on planning projects, running a variety
14 of planning projects.

15 Q. During those two years from 2016 to 2018
16 when you were with OHM, did you serve as
17 municipal planner, contracted municipal planner?

18 A. Yes. I converted my Bexley contract
19 over to OHM.

20 Q. Any other community?

21 A. In that capacity?

22 Q. Yes.

23 A. No.

24 Q. Aside from your work with Bexley, were

1 you working during that time with other public
2 entities, private developers? What were you
3 doing?

4 MR. INGRAM: Objection to form.

5 You can answer if you can.

6 A. Almost exclusively public agencies: Mid
7 Ohio Regional Planning Agency, City of Columbus,
8 City of Whitehall, City of Lorain, City of
9 Newburgh Heights. Many cities and regional
10 planning agencies throughout this near region.

11 Q. So in 2018 you went elsewhere, right?

12 A. Correct.

13 Q. Why is that?

14 A. I was recruited by HDR to work with
15 them.

16 Q. And I'm not as familiar with HDR. Are
17 they a planning company?

18 A. HDR's a multinational engineering firm,
19 whereas OHM is more of a regional engineering
20 firm that has also planning, landscape
21 architecture, architecture.

22 Q. What did you get recruited to do for
23 HDR?

24 A. I got recruited for a new division that

1 was specifically focusing on the integration of
2 new mobility technologies into land use
3 planning.

4 Q. Did you do any of that mobility focus in
5 your prior work with OHM, Side Street or MKSK?

6 A. Yeah, I had, particularly with OHM in
7 both transit and individual mobility and in
8 technology, yeah.

9 Q. With -- when you were with HDR, did you
10 continue doing your public planning work with
11 the public agencies?

12 A. Yes, less. To a lesser degree, yes.

13 Q. Did you continue your work with the City
14 of Bexley during that time?

15 A. I discontinued my work with Bexley by my
16 request as it was not compatible with my travel
17 schedule since I was doing projects all over the
18 country.

19 Q. With HDR did you serve as the municipal
20 planner for any other community?

21 A. I did not.

22 Q. So you went back to OHM?

23 A. Correct.

24 Q. And why's that?

1 A. Two reasons. The main reason was --
2 shorthand is COVID, and the second reason was
3 that that division that was formed was sort of
4 splintering with many of our core group going to
5 other entities and/or other areas within HDR,
6 and I was re-recruited to go back to OHM so I
7 did so.

8 Q. And you've been with OHM since?

9 A. Correct.

10 Q. And you're a principal there?

11 A. Correct.

12 Q. So since returning to OHM, you are
13 serving as the City of Bexley planner?

14 A. Correct.

15 Q. Do you serve as the municipal planner
16 for any other community?

17 A. No.

18 Q. Since 2021, have you been contracted
19 with any local public entity to assist with
20 anything?

21 A. Yes.

22 Q. Which ones?

23 A. City of Columbus, COTA. Since what
24 year, I'm sorry?

1 Q. Since returning to OHM.

2 A. Since returning to OHM. Okay. Because
3 there are quite a few at HDR as well. City of
4 Whitehall, City of Independence, City of
5 Cleveland. I'm sure there are others. Going
6 through my roster of projects. I'm sorry, I
7 can't recall at this time others.

8 Q. Let me ask you for Whitehall. What were
9 you contracted to do for Whitehall?

10 A. We teamed with a firm called ZoneCo, and
11 we lead their rewrite of their zoning code. I
12 also had done some comprehensive planning for
13 them in my first stint at OHM that we built on.

14 Q. When did you do the work for Whitehall
15 with respect to their comprehensive plan?

16 A. I can't recall the exact year. It was
17 in the first stint of working for OHM.

18 Q. So sometime between 2016 and 2018?

19 A. Correct.

20 Q. Is most of your time spent working with
21 the City of Bexley or is there another
22 particular client that takes a majority of your
23 time?

24 MR. INGRAM: Objection to form.

1 A. I split time. In the last few weeks
2 I've spent quite a bit of time working with
3 Bexley based on a higher caseload. In general,
4 it goes up and down. I have a retainer
5 contract. OHM has a retainer contract with
6 Bexley which they utilize for us. It's steady
7 with I'd guess you say lumps in it. There's ups
8 and higher times of work. I'm also working a
9 lot with City of Columbus and City of Cleveland
10 on a number of projects.

11 Q. For the City of Columbus, in particular,
12 what type of work are you doing for them?

13 A. We are working for the City of Columbus
14 as a subconsultant to another firm called
15 TransSystems on the bus rapid transit corridor
16 that is called the northwest corridor that goes
17 through Ohio State, theoretically up to Dublin
18 at some point, up Olentangy River Road. We're
19 also a sub to a firm called WSP on the downtown
20 mobility study where we're looking at how to
21 integrate the downtown transportation network
22 with ongoing land use and population changes and
23 transportation changes that are happening.

24 we've been part of mobility contracts

1 for the City of Columbus as well as the -- as a
2 consultant on the bikeways planning update. I
3 think those are all the ones -- oh, and I just
4 started something called an ETOD project for the
5 northwest corridor, and that is equitable
6 transit oriented development. So we're
7 specifically looking at site planning
8 possibilities on five key sites along the
9 Olentangy River Road corridor for the City.

10 Q. Are any of those projects for the City
11 of Columbus related to ongoing work for COTA as
12 well? I know they've partnered on a few things.

13 A. Sort of. The BRT project is being
14 co-managed overall between the City of Columbus
15 and COTA just by management -- the way they
16 decided to manage it was that they split off the
17 corridor. So the east/west corridor is being
18 managed by COTA. City of Columbus is managing
19 the northwest corridor, but the collaboration
20 takes place throughout the process.

21 Q. Since returning to OHM in 2021, have you
22 been -- outside of this matter have you been
23 retained by any private developers?

24 MR. INGRAM: Objection to form.

1 Misstates the evidence.

2 A. Have I personally? Could you rephrase
3 the question?

4 Q. Sure. You just listed a number of
5 projects or clients you're working with --

6 A. Right.

7 Q. -- all of which are public sector
8 clients. So my question is since 2021, have you
9 been retained or have you done work with any
10 private sector land developers?

11 MR. INGRAM: Objection to form.

12 A. I personally have not.

13 Q. OHM has?

14 A. Yes.

15 Q. What is your board and commission
16 experience? I know you're on the -- if I can
17 find it here -- Italian Village Commission.

18 A. Correct.

19 Q. I'll get to that in a second, but do you
20 sit on any other boards or commissions
21 currently?

22 A. I do not.

23 Q. What is your role on the Italian Village
24 Commission?

1 A. I'm the chair of the commission.

2 Q. And how long have you been on the
3 commission?

4 A. Now, about 20 years, close to 20 years.

5 Q. And is that an appointed seat?

6 A. It is.

7 Q. And you're appointed by the City of
8 Columbus?

9 A. Yes, by the mayor's office.

10 Q. And what is the oversight of the Italian
11 village Commission?

12 A. We are an historic review commission
13 that is charged with administering several plans
14 relevant to the neighborhood. We have a set of
15 historic design guidelines that cover all of
16 Italian Village, and then we have a set of High
17 Street design guidelines which actually cover a
18 jurisdiction that's split between Victorian and
19 Italian Village, and we administer the Italian
20 village side of that.

21 Q. Are you a final decision-making body or
22 are you a recommending body or both?

23 MR. INGRAM: Objection to form.

24 A. Yeah, we are both. We are a final

1 decision-making body for certificates of
2 appropriateness, and we are a recommending body
3 for rezonings and for zoning variances.

4 Q. What types of matters do you see most
5 frequently for purposes of obtaining a
6 certificate of appropriateness in that position?

7 MR. INGRAM: Objection to form.

8 You can answer if you can.

9 A. That has shifted over the years as far
10 as overall it had been and sort of continues to
11 be one of the most rapidly evolving
12 neighborhoods in the city. So we saw a lot of
13 large scale site plan review processes where we
14 would get multiple mixed use, multiple building,
15 variety of densities, styles, sort of all the
16 things you could get in a development of an
17 urbanized neighborhood.

18 On the other hand, we also get a new
19 back door. We used to get almost exclusively
20 new development and very few of the more sort of
21 watchmaker tinkering applications. Now I would
22 say we're probably a little more skewed toward
23 those while we have streamlined the city process
24 so they're able to give staff recommendations on

1 a lot of those smaller things they weren't able
2 to before. So I think we're probably about
3 split now between doing what I would consider
4 legitimate site plan and architecture review and
5 helping someone have a new patio in their
6 backyard.

7 Q. When you act as a recommending body on
8 rezonings, where does your recommendation go?
9 what process does it follow?

10 MR. INGRAM: Objection to form. Vague.

11 A. It -- for the variances it goes to the
12 BZA. For the rezonings I believe it goes
13 directly to council. I cannot state with legal
14 certainty that that is the process. I believe
15 that is the process.

16 Q. Do you as the chair of the commission
17 sort of follow your cases to the next step
18 typically?

19 MR. INGRAM: Objection to form.

20 You can answer if you can.

21 A. Not really. I guess I could say that I
22 see the results if they occur in the
23 neighborhood.

24 Q. Any other boards or commissions that you

1 currently sit on?

2 A. I don't.

3 Q. Have you ever been elected to a city
4 council?

5 A. No.

6 Q. Have you ever been elected to any other
7 elected position or body?

8 A. Public?

9 Q. Yes.

10 A. No.

11 Q. Have you ever sat on a board of zoning
12 appeals or a planning and zoning commission?

13 A. No.

14 Q. I think I've asked this already, but let
15 me just double check. You've never testified in
16 federal court or for a federal lawsuit, right?

17 A. Correct.

18 Q. Have you ever testified in a state civil
19 lawsuit?

20 A. No.

21 Q. I assume you've testified under oath in
22 administrative proceedings before local bodies?

23 A. Yes.

24 Q. Now, we're going to turn our attention

1 back to your report which we marked as
2 Exhibit 140. Were you retained to do this
3 report by the Vorys firm or by someone else?

4 A. I was retained by the Vorys firm.

5 Q. Have you been retained by the Vorys firm
6 previously?

7 A. No.

8 Q. Have you worked with Eric Gardner
9 previously?

10 A. Yes, though I don't recall when.

11 Q. Did you speak with Eric Gardner or
12 anyone from his office during your preparation
13 of this report?

14 A. No.

15 Q. Did you receive any email correspondence
16 from Eric Gardner's office in relation to this
17 report?

18 A. I don't believe so.

19 Q. What were the terms of your engagement
20 with Vorys?

21 A. Paid hourly to prepare an expert report.

22 Q. I assume you're paid hourly for
23 testimony?

24 A. Yes.

1 Q. Were you given any instructions or
2 specific facts to consider as part of the
3 engagement?

4 A. Only the complaint which I read.

5 Q. Do you recall when you were engaged?

6 A. I do not.

7 Q. Was there a formal engagement letter or
8 proposal or agreement that was signed?

9 A. There is. There is one of those in the
10 record somewhere.

11 Q. Do you maintain a work file for work
12 like this?

13 A. I do.

14 Q. I assume that would be in your work
15 file?

16 A. I'm sure it is.

17 Q. What was the scope of your work? What
18 were you asked to do?

19 A. The scope was to review the application
20 materials, the relevant documents, the relevant
21 meeting materials, everything I've set out in my
22 report, and to prepare a review of the
23 application as it compares to the relevant
24 documents in the city, and to also give my

1 opinion on the process of review that the
2 city -- was undertaken by the city and compare
3 that to my professional experience in other
4 project review.

5 Q. Are you engaged with the Vorys firm as a
6 principal with OHM or individually?

7 A. Individually.

8 Q. Is OHM doing any work on this?

9 A. Could you rephrase?

10 Q. Sure. Is anyone else from OHM assisting
11 you in this?

12 A. No.

13 Q. Does OHM know you've been retained on an
14 individual basis to do this work?

15 A. Individuals at OHM do know that.

16 Q. Have you been retained in your personal
17 capacity to provide expert services since
18 returning to OHM in 2021 before?

19 A. No.

20 Q. What about before 2021, have you ever
21 been retained in your personal capacity to
22 provide expert services?

23 A. In a legal matter?

24 Q. Yes.

1 A. No.

2 MR. ASHRAWI: Take a quick break?

3 MR. INGRAM: Sure.

4 (Recess taken.)

5 BY MR. ASHRAWI:

6 Q. Mr. Sudy, I want to just kind of walk
7 through your report which we marked as
8 Exhibit 140 starting with the scope and
9 methodology. I see listed in the very first
10 paragraph that you reviewed the proposed mixed
11 use development by Lifestyle Communities in
12 light of applicable zoning standards,
13 worthington's strategetic and comprehensive plan
14 for the subject property, and the city's
15 consideration of the development. My first
16 question is when you say zoning standards, what
17 are you referring to specifically?

18 A. I'm referring to the zoning code
19 sections that I believed were relevant to this
20 case.

21 Q. I assume you don't have those section
22 numbers memorized off the top of your head?

23 A. I do not.

24 Q. would it be safe to assume that those

1 zoning code sections related to the property's
2 zoning district and the permitted uses
3 thereunder?

4 MR. INGRAM: Objection to form.

5 A. It related to the current property
6 zoning and the proposed property zoning.

7 --0--

8 (Deposition Exhibit 141 marked.)

9 --0--

10 BY MR. ASHRAWI:

11 Q. Before we go too much farther, I'm going
12 to hand you what we marked as Exhibit 141.

13 Mr. Sudy, I'll represent to you that Exhibit 141
14 includes a staff memorandum prepared for a
15 council meeting for December 13th, and includes
16 the Lifestyle Communities' proposal and rezoning
17 application, but if you could please take your
18 time, review this document. My question's going
19 to be is this the proposal that you reviewed in
20 preparation for your expert report?

21 MR. INGRAM: Counsel, for purposes of
22 the record Exhibit 141 is page 21 of 201 through
23 151 of 201. Is that correct?

24 MR. ASHRAWI: That's correct.

1 MR. INGRAM: Take your time to review
2 that, Mr. Sudy.

3 MR. ASHRAWI: For the record, the 201 is
4 the entire agenda packet for that council
5 meeting. This is the portion of it related to
6 this matter.

7 BY MR. ASHRAWI:

8 Q. Is that one highlighted?

9 A. Yes, it is highlighted. It appears to
10 be the same report that I reviewed.

11 Q. Do you mind if we trade? I think that's
12 my version, although there's nothing written on
13 there. But just in case I wrote anything bad
14 about Chris I'll just trade you. I apologize
15 for making us take more time, but -- I'll
16 represent to you they're the same document, but
17 please double check me.

18 A. Appears to be the same.

19 Q. And is this the proposal obviously
20 behind the staff memorandum that you reviewed
21 for your expert report?

22 A. Yes, this appears to be it.

23 Q. In the last sentence of the first
24 paragraph under scope and methodology you

1 indicate that you were asked to review relevant
2 materials. Other than the materials listed on
3 that same page, did you review anything else?

4 A. Included in the materials from the
5 website was also the video, if that isn't
6 specifically noted here, for the ARB/planning
7 commission meeting. I don't recall any other
8 things that I reviewed.

9 Q. You also indicate that you conducted
10 relevant research. What research did you
11 conduct?

12 A. I went to the site to look at the site,
13 and I considered the review of the documents as
14 well as the review of the zoning code to be
15 research as well.

16 Q. You didn't do any outside research
17 outside of these documents or visiting the site?

18 MR. INGRAM: Objection to form.

19 A. Could you clarify?

20 Q. Sure. Did you speak with anyone about
21 this assignment or your work? Did you do any
22 outside planning research or was it all related
23 to your review of the materials and the site
24 visit?

1 MR. INGRAM: Same objection.

2 A. The context of this development is
3 similar to the context of projects that we do
4 for growing suburbs throughout the region. So I
5 could say that there's sort of a body of
6 research that I've accomplished that this fits
7 into the context of.

8 Q. Outside of that, though, there wasn't
9 anything else specific that you meant by
10 conducting relevant research?

11 A. Yes, that is accurate.

12 Q. And when you say you performed the
13 necessary investigation analysis on the subject
14 matter, is that also related specifically to the
15 materials and the site visit and your working
16 knowledge?

17 A. Yes.

18 Q. When you went to the site, what were you
19 looking for?

20 MR. INGRAM: Objection to form.

21 A. Could you be more specific?

22 Q. Sure. What's the point of the site
23 visit?

24 A. The point of a site visit is to

1 understand that what you are looking at in two
2 dimensions is -- how what you're looking at in
3 two dimensions is applicable to the
4 three-dimensional world to see if there are any
5 distinguishing site characteristics that
6 wouldn't be evident from a plan to sort of field
7 verify the context of the photos and the overall
8 site plan within the real world situation that
9 you're investigating.

10 --0--

11 (Deposition Exhibit 142 marked.)

12 --0--

13 BY MR. ASHRAWI:

14 Q. I'm going to hand you what we'll mark
15 now as --

16 MR. INGRAM: 142.

17 Q. -- Exhibit 142.

18 MR. ASHRAWI: This is another large
19 document, Chris, I only have two of.

20 Q. Mr. Sudy, I'll represent to you that
21 this is the City of Worthington 2005
22 comprehensive plan, but please take a look at it
23 and let me know if this is the same 2005
24 comprehensive plan that you reviewed as part of

1 your work on this report?

2 MR. INGRAM: I'm sorry, Yaz, I don't
3 have a copy. Does this have the 2014 update?

4 MR. ASHRAWI: No, this is just the 2005
5 plan.

6 A. It appears to be.

7 Q. You participated in this plan for the
8 city?

9 A. I did.

10 Q. In what capacity?

11 A. I was a staff planner for the plan and
12 contributed some of the writing and editing in
13 the plan process.

14 Q. And your work on this comprehensive plan
15 would have been in your capacity when you were
16 with MSI which then was MKSK?

17 A. Correct. I may have done this map, too.
18 I used to know how to do maps. I don't know how
19 to do them very well anymore. Software's passed
20 me by.

21 Q. Ditto.

22 Do you recall if you did any particular
23 work or analysis that went into this
24 comprehensive plan other than the map and the

1 writing?

2 A. Could you be more specific with regard
3 to the writing?

4 Q. Sure. I see a list of consultant team
5 members from MSI on page iii. It lists, among
6 other people, Keith Myers, Chris Hermann, Jason
7 Sudy, and then Kathryn Meyer, and Aron Frazier.
8 What was your specific role, and if you recall,
9 what were the roles of the other members of the
10 consulting team?

11 MR. INGRAM: Objection to form. Vague.
12 You can answer to the extent you can.

13 A. Keith Myers was a founding principal and
14 co-owner of the firm. He was the M of MSI and
15 as such would oversee the planning department in
16 general. I don't recall his specific role on
17 this, but I would hypothesize it was at more of
18 a distance or at a higher level, a little bit
19 removed.

20 Chris and I used to share a lot of the
21 same responsibilities at MSI, and I ran a number
22 of planning projects and had different planning
23 clients, and he would run different planning
24 clients, and we would often contribute to each

1 other's projects.

2 Seeing Aron Frazier on this means I did
3 not do this map, because we already hired
4 somebody who was better at doing maps than I
5 was, and he would have done the mapping GIS
6 analysis and probably just general plan
7 assistance.

8 Kathryn was more of a junior planner who
9 would have helped run the public process,
10 assemble the document and all those types of
11 things.

12 My recollection of this as best as I can
13 recall is that I contributed primarily to
14 writing the land use sections, and I also recall
15 that there was a robust discussion at that time
16 about the challenge of Worthington with regard
17 to declining school enrollment, and there was
18 quite a bit of -- sort of a general discussion
19 in central Ohio at that point based on the way
20 school funding took place and some strategies
21 that different communities were going through in
22 order to facilitate the best outcomes for them.
23 That's to the best of my knowledge what I worked
24 on on this plan admitting that it was some time

1 ago.

2 Q. Do you recall not in your review but in
3 your original work on this plan the discussion
4 on the subject property?

5 MR. INGRAM: Objection to form.

6 A. I recall the discussions on the focus
7 areas that were identified overall equally.

8 Q. Why did you review this 2005
9 comprehensive plan in preparation for the
10 report?

11 A. Whenever I'm working in any city
12 regardless of the capacity, I think it's very
13 important to understand the progression of any
14 adopted planning materials that are in place.
15 It is my understanding that the 2014 update
16 really was meant to keep the bulk of this
17 document intact and supplement that.

18 So in my opinion, it's relevant in the
19 fact that it does convey at least some sense of
20 what the community is still thinking, albeit a
21 document that was originally created in 2005,
22 and that's why I reviewed it in order to
23 understand the larger context of the site.

24 Q. If you turn to page 40, I think this is

1 a discussion on, in part, the UMCH home site.
2 In the second paragraph right there in the
3 middle it talks about the Methodist children's
4 home continues to care for troubled youth, but
5 has rezoned portions of its High Street frontage
6 for commercial. Both uses are appreciated. Do
7 you see where I'm reading?

8 A. I do.

9 Q. It talks about that any change of the
10 land use of this site should be carefully
11 reviewed by the city. Do you recall back in
12 2005 the discussion or any discussion about the
13 future plans for that site specifically?

14 A. Not that there were specific plans. We
15 discussed that it was one of the key potential
16 redevelopment sites in the city and as such
17 should be identified in that way.

18 Q. And it's probably one of few remaining
19 parcels -- large parcels to be developed in the
20 city of Worthington. Would you agree?

21 A. I would agree.

22 Q. Would you agree from a planning
23 perspective for that reason among others it's
24 important to carefully review anything that goes

1 on there?

2 A. I would.

3 Q. Do you know how long that site has been
4 zoned under its current zoning?

5 A. I do not.

6 Q. Since at least 2005. Is that right?

7 A. I don't know if that's true. It may or
8 may not be true.

9 Q. Did you speak with anyone from the City
10 of Worthington for purposes of preparing your
11 report?

12 A. No.

13 Q. Do you know the city planner at the City
14 of Worthington?

15 A. You're referring to Lee Brown?

16 Q. Yes.

17 A. Yes, I do.

18 Q. Have you worked with him in a
19 professional capacity before?

20 MR. INGRAM: Objection to form.

21 A. Could you clarify in a professional
22 capacity?

23 Q. Sure. Has the City of Worthington or
24 Lee Brown specifically ever retained your

1 services or your company's services to do
2 planning work?

3 A. He has never retained my services, and I
4 do think we have as a company worked -- OHM has
5 worked in Worthington, though I am unclear
6 whether -- what those projects have been, and
7 when the time frame was, and whether I was at
8 the firm at that time, and if Lee Brown was
9 there at the time. I'm very unclear on whether
10 we --

11 Q. That's mostly what I didn't know. I
12 don't know when Lee was there so I guess another
13 question is have you ever worked with Lee Brown
14 on a planning project outside of the city of
15 Worthington that you recall?

16 A. On a professional planning project?

17 Q. Correct.

18 A. No.

19 Q. Have you ever worked with Lee Brown on a
20 personal planning project outside the city of
21 Worthington?

22 A. Yes, in a student body project. We were
23 in school at the same time.

24 Q. Okay. Was that at Case Western or was

1 that at Ohio State?

2 A. Ohio State.

3 Q. And you said you worked on a project
4 with Lee Brown at that time?

5 A. Probably. We were in a lot of studios
6 so I would imagine we were part of it. I
7 couldn't recall what any of those projects might
8 have been.

9 Q. Working with municipal governments, do
10 you know how municipal governments make most of
11 their money?

12 MR. INGRAM: Objection to form.

13 A. I have a general sense in the state of
14 Ohio.

15 Q. It's through income taxes. Is that
16 accurate?

17 MR. INGRAM: Same objection.

18 A. Yes.

19 Q. In the 2005 comprehensive plan, I
20 believe on page 76, there's a discussion that
21 large redevelopment sites, including this one,
22 it would be in the best interest of the city to
23 have strong income-producing commercial uses.
24 Do you see that?

1 MR. INGRAM: Hang on, Counsel. If you
2 can give the witness time to turn to and read
3 the page.

4 Q. Sure. Take your time.

5 A. I do see it, yes.

6 Q. Would you agree with that statement that
7 the subject property or any infill property
8 should focus on income-producing commercial uses
9 for the benefit of the city?

10 MR. INGRAM: Objection to form. This
11 exceeds the scope of this witness's assigned
12 tasks in this case.

13 A. I'd say not specifically the way it's
14 written.

15 Q. Do you see on that same page that it
16 indicates predominance of residential
17 development on this site is not advisable or in
18 the city's best interest?

19 A. I do.

20 Q. Do you recall at the time why that was
21 not in the best interest of the city?

22 MR. INGRAM: Objection to form.

23 You can answer if you can.

24 A. Yeah, I don't recall.

1 Q. I'm going to hand you now what has
2 previously been marked as Exhibit 1. I'll
3 represent to you, Mr. Sudy, that Exhibit 1 is
4 the 2014 comprehensive plan update for the UMCH
5 focus area, but if you could page through that
6 exhibit and confirm whether you've seen this
7 document before and whether this is what you
8 reviewed as part of your report.

9 A. I can confirm that I have seen it
10 before, that to my knowledge this is the update
11 from 2014, and I did use it as source material
12 as reviewed for my report.

13 Q. What was the -- what's the purpose of
14 this document from your professional
15 perspective?

16 A. In my perspective this is one of the
17 most powerful tools that we have as urban
18 planners, and as public planners, and as site
19 planners, and this is the idea of a focus area
20 plan.

21 And as I outlined in my staff -- or in
22 my report there are some overlapping terms in
23 public planning which would probably be well
24 served to define more completely at some point.

1 It's a different story in that comprehensive
2 plans unfortunately named comprehensive plans
3 due to the fact that that is often assumed to be
4 comprehensive of everything, and certainly they
5 are not, and every community picks and chooses
6 which things they want to focus on most
7 completely.

8 This is a tool, the focus area plan, and
9 is a tool used in almost every comprehensive
10 plan I've been a part of and most of them that
11 I've reviewed with the idea that a comprehensive
12 plan isn't truly comprehensive. It can't look
13 in great detail of every single portion of the
14 city. That would be burdensome on the cost of
15 the plan, it would be burdensome on those
16 reviewing the plan, it would be burdensome in
17 that it's very difficult to anticipate all the
18 foreseeable market conditions and changes and
19 things that would take place.

20 So what happens is a focus area plan is
21 done, and typically throughout the comprehensive
22 plan process there is a robust public engagement
23 and discussion in order to determine where those
24 focus areas should most likely be. And that

1 often takes place through listening to community
2 leaders to staff members to elected officials,
3 to public planning -- to members of the public,
4 and reviewing previous planning documents, and
5 sometimes looking at market evaluations, traffic
6 studies, any of those types of things.

7 So the determination of these focus
8 areas took place in the 2005 plan, and this was
9 identified as a primary site for the reasons
10 that you've previously mentioned. Based on some
11 changes that took place, in particular the fact
12 that the children's home was no longer in
13 operation, the city apparently -- and again, I
14 don't -- can't describe their exact motivations.
15 My professional planning experience would be
16 when there's a major change in use or a
17 significant change of some sort at a site that's
18 been identified as a major focus area that's
19 typically the impetus for a city to think about
20 revising that focus area.

21 In the case of Worthington I think this
22 is even more powerful, because they chose to
23 look only at this one focus area. It wasn't a
24 situation where they redid their whole

1 comprehensive plan, nor did they look at all of
2 their previous focus areas, nor did they
3 identify new focus areas.

4 They clearly identified some sort of
5 potential and likely shift in this area based on
6 changing conditions, and as such, did this plan.

7 They hired the firm that I had worked
8 for several -- many years before -- or several
9 years before, at that point known as MKSK, in
10 order to go through what I would consider a
11 robust public process. I was not part of that
12 process. I reviewed the list of meetings that
13 they undertook in order to accomplish this, and
14 I think from a professional planning practice
15 standpoint in my personal experience that was
16 what would be considered a robust process for a
17 site of this size and amendment of this size.

18 And as we can see, while I think it has
19 a whole lot of information in here it really,
20 you know, in sum total ranges from page 89 to
21 99. So we're talking about, I guess, 11 pages
22 of new material that are generated out of a
23 really extensive year-long process. And not
24 that there's a direct correlation between the

1 amount of time and the number of pages, but I
2 think there certainly is an indicator that there
3 was a huge amount of interest and community
4 input put into generating a very targeted
5 outcome for this plan.

6 So in using this plan at this -- in my
7 opinion is the most significant element to guide
8 the future development of this site, and I would
9 use this as a staff planner as basically my
10 bible to guide this development due to the fact
11 that it went through a robust public process and
12 it was adopted by the elected officials of the
13 city, which would mean to me that this is the
14 most accurate portrayal of the community's
15 wishes for how this could proceed as a
16 development site. So that is why I really
17 focused on this as a key element in the overall
18 review process for understanding the site.

19 Q. Thank you for that. Let me see if I can
20 remember all my questions.

21 A. Sure.

22 Q. You would agree that MKSK is a reputable
23 and well respected planning company?

24 A. I would.

1 Q. You would agree that this document,
2 what's been previously marked as Exhibit 1, the
3 2014 focus area update, didn't change the zoning
4 for the subject property, right?

5 A. It did not.

6 Q. You would agree that it provided future
7 land use recommendations, correct?

8 A. Correct.

9 Q. You would also agree that it provided
10 guidance as to a range of desired land uses and
11 developments?

12 MR. INGRAM: Objection to form.

13 A. I would say it provided guidance toward
14 a relatively narrow range in some of the
15 subareas and then a somewhat larger range in
16 some of the subareas.

17 Q. It didn't prescribe any particular
18 development in here, did it?

19 A. It did not.

20 Q. On page -- what's labeled as page 90,
21 which is the second page of the exhibit, the
22 area, the subject property, the current zoning
23 for that subject property is included both in
24 text and an image. Do you see that?

1 A. The zoning for the property, yes, I see
2 that.

3 Q. So a large majority of the property is
4 zoned S1 special?

5 A. Yes.

6 Q. And that was also the zoning of the
7 property back in 2005. Do you recall that?

8 A. I do not recall that.

9 Q. This document didn't change the
10 permitted uses on this subject property, right?

11 A. Could you clarify?

12 Q. Sure. You would agree with me that the
13 zoning code, and the zoning districts, and the
14 permitted uses thereunder is what prescribes
15 what can or cannot be developed on the piece of
16 property, right?

17 MR. INGRAM: Objection. Calls for legal
18 conclusion.

19 A. I mean, a zoning code functions as the
20 legal right to develop on a property. I can say
21 that.

22 Q. So my question is with this document did
23 those legal rights change as to this property?

24 MR. INGRAM: Same objection.

1 A. To my knowledge, no.

2 Q. On page 91, which is the third page of
3 the exhibit, the first paragraph on the left
4 column, the last sentence talks about the
5 importance of the potential site to the
6 community and an expectation for public/private
7 partnership to play a role in the planning and
8 redevelopment of the site. Do you see that?

9 A. I do see it.

10 Q. Do you know what type of public/private
11 partnership was contemplated or is being
12 contemplated for this site?

13 A. For this particular site, I do not know.

14 Q. Would you agree that public input among
15 other -- among input from other stakeholders is
16 critical in planning?

17 MR. INGRAM: Objection to form. Calls
18 for speculation.

19 A. You have to be more specific for me.

20 Q. Sure. In your work as the City of
21 Bexley planner, does the city consider the
22 opinions or considerations that the public
23 brings with respect to various planning
24 projects?

1 MR. INGRAM: Same objection and
2 incomplete hypothetical.

3 A. It's difficult to answer that. I mean,
4 generally it depends. Depends on the --
5 depends. That's all I can say.

6 Q. What does it depend on?

7 A. Depends on at what point different
8 elements of concern are raised, and how they're
9 raised, and the process by which they're raised.

10 Q. Are all your professional opinions about
11 this site and this project under your scope
12 contained in your report?

13 A. Could you rephrase?

14 Q. Sure. You provide your professional
15 opinions in the report, correct?

16 A. Yes.

17 Q. Do you have any opinions, professional
18 expert opinions, about the scope of work you
19 were tasked to do that you have not included in
20 your report?

21 A. No.

22 Q. Is it your opinion that the LC proposal,
23 which we've marked as Exhibit 141 for your
24 reference, meets the guidance that was provided

1 in the 2014 comprehensive plan update?

2 MR. INGRAM: Objection to form. A staff
3 memorandum is different than Lifestyle's
4 proposal, Counsel.

5 A. Could you explain like your -- this is
6 the --

7 Q. Sure. I'm referring specifically to
8 Lifestyle's proposal, and my question is, is it
9 your opinion that the proposal that you reviewed
10 met the guidance provided in the 2014 comp plan
11 focus area?

12 A. Yes.

13 Q. The density in the proposal -- total
14 density of the proposal was 15.95 dwelling units
15 per acre. Is that right?

16 A. I'll need to refer to...

17 Q. Turn to page 28 for reference.

18 A. That is how the staff calculated it.
19 Yes, that is accurate.

20 Q. You would agree that that density of
21 dwelling units per acre is greater than the
22 guidance provided in the 2014 strategetic plan,
23 right?

24 A. No.

1 Q. What is the guidance in the 2014
2 strategic plan?

3 A. The guidance is per subarea, and this
4 plan is very specific about the way that that
5 issue is handled. So this breaks out four
6 subareas into -- or out of the overall whole
7 site, one of which we can set aside from a
8 density perspective as the Tucker Creek Preserve
9 as that is intended to be preserved for a
10 natural feature reserve and has been submitted
11 for that in the Lifestyle plan.

12 So there are two other areas that have
13 specific recommendations as far as the number of
14 units. I'm going to flip into this in my report
15 so I can give you the accurate numbers. So in
16 the Worthington Estates Edge the plan says that
17 calls for single-family residential development
18 on lots between a third and a fifth of an acre.
19 This equates to a residential density similar to
20 Worthington Estates three dwelling units per
21 acre and Old Worthington four to five dwelling
22 units per acre.

23 MR. INGRAM: Slow down.

24 A. Sorry. That is from the 2014 update on

1 page 92 to 93.

2 The Lifestyle plan includes
3 single-family lots at 3.72 units per acre. So
4 that is, in fact, within the range that they
5 have prescribed.

6 Then moving to the Neighborhood Core,
7 the Neighborhood Core on page 93 says it calls
8 for development density between 6 and 14
9 dwelling units per acre, gross density, with
10 height limit of three stories. And they
11 specifically mention there that they want -- the
12 plan anticipates that the Neighborhood Core will
13 be developed with more than one housing type and
14 more than one density level.

15 what this plan does is it offers two
16 different housing types in conformance with that
17 plan recommendation at two different density
18 levels in conformance with the plan
19 recommendation. One of those densities at 9.55
20 and the other at 14.5. I have not calculated
21 that specific average here. Yet, I can attest
22 that when you average those acreages together
23 with the number of units it does come into the
24 range which is 6 to 14 in the Neighborhood Core,

1 which is exactly in keeping, and how I would
2 interpret that in any review that I was doing in
3 a professional staff capacity.

4 In the High Street mixed use area it's
5 very notable that there is not a density range,
6 and this is very typical in the way that these
7 plans are done in mixed use corridors. I have
8 done plans like this. I have implemented plans
9 like this. I've read plans like this. I've
10 worked in numerous communities that had similar
11 type of approaches where instead of a delineated
12 range of densities instead there is a general
13 form that is prescribed.

14 And in this case this form has to be a
15 minimum of two stories, and it could be up to
16 five stories, and that form is what dictates how
17 many units. It could be -- you could have
18 extraordinarily few units or you could have very
19 many.

20 There's a particular project on Main
21 Street in the city of Bexley that is tens of
22 thousands of square feet and has four units in
23 it, because the people who built it decided they
24 wanted to have very large units. There are

1 many, many more examples of buildings that are
2 this size that have a more typical unit count,
3 which is dictated by the natural constraints of
4 the site and the economics of the site in order
5 to facilitate a certain size of surface parking
6 and/or parking garage, and that's baked into the
7 essence. And what this is suggesting is that
8 that is completely appropriate as far as a
9 strategetic analysis goes in this plan.

10 Q. Is it your position that -- let's set
11 the mixed use subarea aside. Is it your
12 position that if the subareas have a density
13 between 9 and 14 dwelling units per acre that
14 the city must approve the planned unit
15 development rezoning?

16 MR. INGRAM: Objection to form.
17 Incomplete hypothetical.

18 A. Could you make that more specific?

19 Q. Sure. You just got done telling me why
20 the density of the three subareas meet the
21 guidelines in the 2014 strategetic analysis and
22 home focus area, right?

23 A. (Nods head).

24 Q. Is it your position that by meeting the

1 guidance in this 2014 focus area document the
2 City of Worthington must approve the planned
3 unit development?

4 A. The City of Worthington must, in my
5 opinion, use this document as the primary
6 guiding source of evaluation, and as many cities
7 they have a board that also considers
8 aesthetics, and that is a valid review tool that
9 can be used. Unfortunately in this case, it
10 never progressed to the aesthetic review based
11 on the fact that it was cut short before the
12 architectural review board was able to
13 participate in that.

14 Q. So back to my question. In your
15 opinion, is the city required to approve the
16 planned unit development if it contains a
17 density for the Neighborhood Core between the 6
18 and 14 dwelling units per acre that's outlined
19 in the 2014 focus area document?

20 MR. INGRAM: Objection. Same objections
21 as before. Incomplete hypothetical and asked
22 and answered this time.

23 Q. You can answer my question.

24 A. No.

1 Q. No, they're not required?

2 A. They're not required.

3 Q. Turning our attention to the
4 multi-family -- excuse me, mixed use area. If
5 I'm understanding your testimony from earlier,
6 and please correct me if I'm wrong, you
7 testified that the 2014 focus area document
8 we've identified as Exhibit 1 doesn't provide a
9 specific density by way of dwelling unit per
10 acre number for that area. Is that accurate?

11 A. Correct.

12 Q. So from your perspective does that mean
13 that a developer is permitted to provide
14 whatever density that developer wants?

15 MR. INGRAM: Objection to form.

16 A. Within the context of the overall
17 guidelines for that area.

18 Q. And it's the city's prerogative to
19 accept or reject what that developer proposes in
20 that context. Is that correct?

21 MR. INGRAM: Objection.
22 Mischaracterizes this witness's prior testimony.

23 A. It's the prerogative of the city to
24 evaluate whatever is proposed against this in

1 order to determine if it meets the standards
2 here.

3 MR. INGRAM: For purposes of the record,
4 the witness was just pointing to Exhibit 1.

5 MR. ASHRAWI: Thank you, Chris.

6 Can you read that answer back? I'm
7 sorry I lost track.

8 (Record read as requested.)

9 Q. So if a city has determined that, for
10 example in this case, the proposal's too dense,
11 you would agree that the city has the right to
12 request a lower density development in that
13 mixed use area. Is that right?

14 MR. INGRAM: Objection. Assumes facts
15 not in evidence. Incomplete hypothetical.
16 calls for speculation.

17 You may answer if you can.

18 A. I don't think that they have shown that.

19 Q. Say that one more time.

20 A. I don't think they have shown it's too
21 high of density.

22 Q. who's they in that statement?

23 A. The staff and the planning commission.

24 Q. How would you show that something is too

1 high -- too highly defense?

2 A. In the case of this strategetic plan
3 since there is no set density range it would
4 have to exceed the building form, and that is
5 the only way that you could -- in my opinion, my
6 expert opinion in the hundreds of cases like
7 this that I've been involved in, that's the only
8 way that you can apply the standards in this
9 plan in order to determine what you would think
10 as a city or staff is an inappropriate density.
11 You have created a public document over a robust
12 public process that outlines the form of the
13 building. It does not outline the density so
14 there is no maximum density in this plan.

15 Q. So a developer can -- is entitled to
16 whatever density it wants, then?

17 MR. INGRAM: Objection to form. Asked
18 and answered and mischaracterizes this witness's
19 prior testimony.

20 A. That -- a developer has to conform to
21 the -- doesn't have to. A developer who does
22 conform to this plan would have a natural limit
23 on the density that they could create.

24 Q. Are you aware that Lifestyle previously

1 proposed -- made a proposal with over 700 units
2 for the subject property?

3 A. I am aware of the staff review that
4 states that.

5 Q. Are you aware of Lifestyle Communities
6 presenting a plan to the city that included over
7 700 units?

8 A. It is my understanding that happened.

9 Q. Have you seen that proposal?

10 A. I have not.

11 Q. Is it your position, then, that the
12 700-plus unit proposal would be appropriate
13 under the guidelines of the 2014 focus area?

14 MR. INGRAM: Objection. Calls for
15 speculation.

16 A. I haven't seen that plan so I don't know
17 if the form of that plan does, in fact, meet
18 this set of standards.

19 Q. You would agree that a municipal
20 planning department in a city and their various
21 boards and commissions look at other documents
22 and information other than just the focus area
23 document, right?

24 A. Most likely.

1 Q. That would include the zoning code?

2 A. Yeah, certainly.

3 Q. Does the focus area document labeled as
4 Exhibit 1 reference multi-family or apartment
5 residential uses anywhere in the document for
6 this site?

7 A. I will have to read it to see.

8 Q. Take your time if you don't recall off
9 the top of your head.

10 A. I do not recall.

11 Q. If it's helpful, I can direct your
12 attention to page 94 where the document
13 discusses introducing different housing options
14 and the types of housing options that could be
15 used on that site.

16 MR. INGRAM: Objection to form.
17 Mischaracterizes the document.

18 A. Could you ask me the question again?

19 Q. Sure. Let's just focus on page 94 for
20 now. You would agree that the document
21 indicates that this site creates an opportunity
22 to introduce different housing options, right?

23 A. It does.

24 Q. And then the document, again what we've

1 marked as Exhibit 1, the 2014 focus area,
2 includes examples of the different types of
3 housing options that would be desirable on this
4 site, does it not?

5 A. It includes examples of some types of
6 housing types, yes, that would be desirable.

7 Q. So let me -- so the examples include
8 single-family detached homes on small lots with
9 rear alley garages, right?

10 MR. INGRAM: Objection.
11 Mischaracterizes this witness's prior testimony.

12 A. Could you clarify what you're asking?

13 Q. Sure. I'm just reading from the
14 document and what is included as examples of a
15 mix of housing types.

16 A. Yes, that is included in their list --
17 in the list.

18 Q. As are homes with great front porches
19 for outdoor gathering, right?

20 A. It is included.

21 Q. Custom homes designed for first-floor
22 living, right?

23 A. It is included.

24 Q. Luxury residences with integrated front

1 auto courts, right?

2 A. Yep.

3 Q. well-appointed walk-up townhomes?

4 A. Yes.

5 Q. And a limited number of high-end flats?

6 A. Correct.

7 Q. which of these examples that are set out
8 in this 2014 focus area did LC include in their
9 proposal?

10 A. They have flats and I believe some
11 townhomes, but I can't be certain of that in
12 this subarea.

13 Q. In the Neighborhood Core subarea?

14 A. In the Neighborhood Core subarea, yes.
15 Single-family homes are part of the Worthington
16 Estates Edge subarea.

17 Q. I'm going to hand you what we previously
18 marked as Exhibit 7. Do you know what this
19 document is?

20 A. I believe I do.

21 Q. What is it?

22 A. This is the update to this portion of
23 the strategic plan that was most recently
24 passed through council.

1 Q. And you reviewed this document in
2 preparation for your report, right?

3 A. I did.

4 Q. This resolution 04-2022, which we marked
5 as Exhibit 7, this was adopted after the city
6 had already rejected the Lifestyle proposal for
7 redevelopment, planned unit development, right?

8 A. That is my understanding.

9 Q. Did this 2022 update change any of the
10 permitted uses permitted by zoning code on the
11 property?

12 MR. INGRAM: Objection. Calls for legal
13 conclusions.

14 A. Not to my knowledge.

15 Q. Did it rezone the property?

16 A. Not to my knowledge.

17 MR. INGRAM: Same objection.

18 Q. Is there any part of this document that
19 is inconsistent with the 2014 focus area plan?

20 A. Yes.

21 Q. Can you walk me through those
22 inconsistencies?

23 A. Yes. The biggest inconsistency is
24 compatible with current S1 zoning. That is not

1 what is outlined in the strategic analysis for
2 2014.

3 Q. Can you identify where you're reading
4 and can you read the --

5 A. On page 2 of 2 of the document you just
6 handed me under general components: Compatible
7 with current S1 zoning, a large contiguous
8 greenspace, central to the property and
9 inclusive...

10 Q. Was there a greenspace component to the
11 guidelines in the 2014 document?

12 A. There were references, yes.

13 Q. So how is the reference to this
14 greenspace different?

15 A. Compatible -- it says seek an outcome on
16 this land. Doesn't say seek an outcome of
17 greenspace. It says seek an outcome on this
18 land that is compatible with current S1 zoning
19 if I'm understanding the way this is formatted.
20 Either way, compatible with current S1 zoning is
21 distinctly identified in the strategetic
22 analysis as not the highest and best use of that
23 property.

24 Q. Anything else that's inconsistent with

1 the 2014 plan?

2 A. It's extraordinarily vague and only
3 delineates -- it uses a lot of language that is
4 very unhelpful in the planning profession.
5 words like harmonious. Those are, as a
6 practicing professional for 25 years, the type
7 of words that we find to be of little use in our
8 staff efforts to try to review a site plan for
9 compatibility. The vagueness of this speaks
10 to -- it's just -- it doesn't give any guidance
11 toward what the outcome should be as was
12 accomplished in this robust public process for
13 the strategic analysis of 2014.

14 Q. I think you used the term harmonious,
15 you said was kind of a vague term?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes.

19 Q. Are there any other vague terms that are
20 used in this 2022 update?

21 A. Exceptional, expressive, desirable,
22 harmonious again, respectful. Those are very
23 difficult for a planner to use as a basis for
24 successful evaluation of a project.

1 Q. Is it your position that the 2022
2 amendments replaced the 2014 focus area or
3 supplemented it?

4 MR. INGRAM: Objection. Calls for legal
5 conclusion. Exceeds the scope of this witness's
6 tasks in this case.

7 A. I'm not clear on the exact legal
8 ramifications of this. I can't speak to their
9 intention. I can say that it is certainly much
10 more vague and less satisfactory from a planning
11 standpoint than the 2014 robustly -- you know,
12 the results of a robust public process that was
13 accomplished.

14 Q. You note on -- in your report that you
15 reviewed the 2014 presentation by MKSK regarding
16 the focus area document which we've labeled as
17 Exhibit 1. Is that right?

18 A. I reviewed the PowerPoint slides if that
19 is what you're referring to.

20 Q. Yes. Do you have any opinion about
21 those PowerPoint slides that is not contained in
22 here?

23 MR. INGRAM: Objection. Vague.

24 A. No.

1 Q. I'll hand you what we previously marked
2 as Exhibit 5. Are you familiar with this
3 document?

4 A. I don't think I am. I don't think I am.

5 Q. You can set that aside, then.

6 A. Okay.

7 Q. You indicated you reviewed the complaint
8 that is filed in this case, right?

9 A. That is correct.

10 Q. Have you reviewed any other pleadings or
11 court records since then?

12 A. Related to this case?

13 Q. Yes.

14 A. No.

15 Q. From a planning perspective, you would
16 agree that city council has discretion in
17 approving or denying a planned unit development
18 rezoning, right?

19 MR. INGRAM: Objection. Calls for a
20 legal conclusion. Exceeds the scope of this
21 witness's tasks.

22 A. They have discretion assuming they have
23 actually reviewed the information that would
24 provide them the ability to properly determine

1 whether or not it met the standards of the PUD.

2 Q. You would agree upon review of the
3 comprehensive plan, focus area, the updates and
4 upon considering those documents the city still
5 does not have a requirement to approve the
6 planned unit development. Is that right?

7 MR. INGRAM: Same objections.

8 A. The requirement, yeah, I can't speak to
9 that from a legal perspective.

10 Q. And just to clarify, I'm not asking from
11 a legal perspective. I'm asking from a planning
12 perspective.

13 MR. INGRAM: Same objections.

14 A. It -- if all of the review process is
15 undertaken and the proper interaction with the
16 applicant and feedback is given and a
17 satisfactory conclusion is not eventually
18 reached, they would have the ability, yeah, to
19 turn that down.

20 Q. Have you been made aware or advised that
21 the Court has dismissed some of Lifestyle's
22 legal claims against the city?

23 A. I cannot recall.

24 Q. Are you aware or have you been made

1 aware that the Court determined that the city's
2 comprehensive plan does not limit the city's
3 discretion in denying the planned unit
4 development zoning?

5 MR. INGRAM: Objection to form.

6 A. Could you clarify that?

7 MR. INGRAM: Mischaracterizes the
8 Court's order.

9 --0--

10 (Deposition Exhibit 143 marked.)

11 --0--

12 BY MR. ASHRAWI:

13 Q. I'm going to hand you what we'll mark as
14 Exhibit 143. Mr. Sudy, this is the opinion and
15 order from the federal court dated March 15th,
16 2023. My first question to you after you've
17 paged through that and review it is have you
18 seen this before?

19 A. I have not.

20 Q. Since you have not seen it, I won't ask
21 you questions about it.

22 A. Okay.

23 Q. I want to turn -- strike that.

24 MR. ASHRAWI: Take a short break. We've

1 been going for about an hour.

2 MR. INGRAM: Sure.

3 (Recess taken.)

4 BY MR. ASHRAWI:

5 Q. Mr. Sudy, I'm going to refer you back to
6 your expert report, and I'm looking at page 3
7 where you begin your discussion. In the
8 introduction you indicate that Lifestyle had a
9 reasonable expectation that the subject property
10 would be zoned and developed in accordance with
11 the city's action plan for the site based on
12 standard accepted professional planning
13 practices through central Ohio region and the
14 State of Ohio. Do you see that?

15 A. I do.

16 Q. Did you speak at anyone at Lifestyle
17 regarding their expectations for the rezoning?

18 A. I did not.

19 Q. Do you know who Bo Brownlee is?

20 A. I don't. I mean, actually I sort of do
21 because I saw his name in the record, but I
22 don't know Bo Brownlee.

23 Also, I wanted to clarify. Earlier you
24 had asked me about the 700 density unit

1 development application. I have reviewed that
2 one. I was getting confused based on the
3 density numbers with a previous submittal that
4 they had made years ago so I just wanted to get
5 that in the record.

6 Q. Thank you for that clarification.

7 A. Yeah.

8 Q. So what is the basis, then, for your
9 finding that Lifestyle had a reasonable
10 expectation that the property would be rezoned?

11 A. In looking at their proposal with
12 comparison to the 2014 analysis, I would find
13 that to be highly in conformance. And it
14 also -- there's also a suggestion that a PUD
15 would be an actual good rezoning category for
16 them to pursue. By Lifestyle pursuing a PUD and
17 in my opinion conforming very closely to what is
18 in the 2014 plan, it should be a situation where
19 there's an iterative process with staff and the
20 boards and commissions to clarify some of the
21 details in order to reach a conclusion which in
22 my opinion would then make it a very reasonable
23 expectation that if you met this and followed
24 the zoning recommendation, you would get a

1 rezoning.

2 Q. Are you aware that a Lifestyle
3 representative previously testified that they
4 understood the rezoning process to not be
5 guaranteed in this instance?

6 MR. INGRAM: Objection to form.

7 A. I'm not aware of that.

8 Q. Would you agree with the state -- a
9 general statement that rezoning is not
10 guaranteed?

11 MR. INGRAM: Objection. Calls for an
12 incomplete hypothetical. Calls for speculation.

13 A. In the world of teaching about zoning,
14 which I did for many years at Ohio State, an
15 absolute extreme version would be, yes, no
16 zoning is guaranteed. That being said, there's
17 a wide variety of expectation as to when you
18 would likely expect a rezoning and when you
19 wouldn't. And I would put this particular
20 application based on the materials that have
21 been submitted and the recommendation for a PUD
22 to be in the category of highly likely to expect
23 a rezoning.

24 Q. And just to clarify, again, that's your

1 opinion. Nobody from Lifestyle told you
2 Lifestyle's expectations, right?

3 MR. INGRAM: Objection. Asked and
4 answered.

5 A. Correct. Yes.

6 Q. In the beginning of the second paragraph
7 you reference that -- or you state that approval
8 of the Lifestyle plan as submitted or with minor
9 modifications is a reasonable assumption. What
10 minor modifications did you have in mind?

11 A. In reading the staff report, I found
12 there to be very little substantive issues at
13 odds with the plan to justify the recommendation
14 of denial. That being said, there are always
15 some issues, particularly in complex mixed use
16 projects and particularly in PUDs where there
17 are a lot of steps.

18 of the issues that were already raised,
19 the particular one that I frankly agree with
20 from staff is Wesley Boulevard was proposed to
21 be a public street, and there was -- staff
22 raised a concern over whether that had been
23 built to public street standards since they
24 would be accepting that and then be responsible

1 for the ongoing maintenance. That's absolutely
2 a comment that I would have made as well if I
3 was reviewing this, and again, something that
4 would have been worked out over the process of
5 the PUD application with the applicant to
6 determine whether or not the city found that to
7 be an acceptable roadway or if it had to be
8 rebuilt, et cetera.

9 In addition, there are likely in any
10 PUD, especially a complex PUD, a number of minor
11 modifications that would take place once the
12 aesthetic elements were designed and discussed,
13 and you know, vetted with the different boards,
14 determined to be in or not as close in
15 conformance with what their aesthetic standards
16 might be. And so not reaching that point, it's
17 impossible to say what those might have been.

18 There also might have been some minor
19 tweaks in the boundaries of the different
20 development districts or in the specific mix of
21 uses or types of uses based on aesthetic
22 considerations that would change the building
23 characteristics that the ARB might request and
24 be agreed to by the applicant.

1 Q. You agree with me that the staff report
2 indicated that the developer was advised the
3 development was too dense?

4 MR. INGRAM: Objection to form.

5 A. I agree that there was discussion about
6 the density. I can't recall whether or not the
7 developer was advised.

8 Q. You clarified earlier that you had seen
9 the Lifestyle proposal of the 700-plus units,
10 right?

11 A. Yes.

12 Q. Do you recall that the city advised at
13 that time that that proposal was too dense?

14 MR. INGRAM: Objection.
15 Mischaracterizes this witness's prior statement.

16 A. I recall that there was a request to
17 have additional office space.

18 Q. You don't recall anything about the
19 residential density?

20 A. At that time I don't recall. That being
21 said, I do recall that it was stated in the
22 staff report.

23 Q. You would agree with me that Lifestyle
24 has the ability to file a new rezoning

1 application today, right?

2 MR. INGRAM: Objection to the extent
3 you're seeking a legal conclusion from this
4 witness and this line of questioning exceeds
5 this expert's assigned tasks in this case.

6 A. Yeah, I mean, that's just a statement of
7 can anybody ever file any zoning ever in the
8 world. Yes, anyone can ever at any time.

9 Q. Including Lifestyle?

10 A. Including Lifestyle.

11 Q. Are you aware of anything preventing
12 Lifestyle from doing that?

13 A. I am not.

14 MR. INGRAM: Same objections.

15 Q. I'm turning now to the portion of your
16 report that's titled planning background. You
17 go over the various plans: the comprehensive
18 plan, strategic plan, focus area plan. I think
19 we've discussed a lot of that at a high level
20 already. You would agree that none of those
21 plans outline permitted uses on the property,
22 right?

23 MR. INGRAM: Objection.

24 A. I would agree that they don't rezone the

1 property. They do specifically suggest quite a
2 few uses.

3 Q. Are those current uses or future uses?

4 A. The plans describe current uses and
5 outline future uses.

6 Q. And are those future uses permitted
7 under the existing zoning for the property?

8 A. Some of them.

9 Q. Which ones?

10 A. Some of the commercial uses are allowed
11 under the commercial zoning.

12 Q. Anything else?

13 A. I would imagine -- yes. The Tucker
14 Creek open space would be allowed under the S1.

15 Q. And there was a Tucker Creek open space
16 in the proposal that LC submitted, right?

17 A. Yes.

18 Q. Anything else?

19 A. You have to -- I'm sorry, could you
20 clarify anything else?

21 Q. Yeah. Any other future land use
22 recommendations that are currently permitted by
23 the zoning code?

24 A. I would say no.

1 Q. In your planning experience and
2 background is public outreach part of the
3 development process?

4 MR. INGRAM: Objection. Calls for legal
5 conclusion.

6 A. I would say that public -- the public
7 meeting process is always part of the
8 development review process.

9 Q. And the public meeting process is an
10 important piece of the development process?

11 MR. INGRAM: Objection. Form.

12 A. Yes, it is, and the public meeting
13 process is clearly defined as opposed to the
14 nebulous form of public outreach which can take
15 myriad forms. Public meeting process is a
16 delineated process that's very clear and central
17 to the review of an application.

18 Q. In your experience and background is it
19 common for local governments to ask land
20 developers to seek public buy-in for a
21 development project?

22 MR. INGRAM: Objection. Calls for
23 speculation. Incomplete hypothetical.

24 You may answer to the extent you can.

1 A. Sometimes.

2 Q. Did you speak with anyone from the city
3 about the city's PUD rezoning process?

4 A. I did not.

5 MR. INGRAM: Objection. Asked and
6 answered.

7 Q. You reviewed the PUD rezoning process
8 outlined in the zoning code, right?

9 A. That is correct.

10 Q. And that the zoning code outlines what
11 must happen through that process, right?

12 A. Yes.

13 Q. Have you ever either owned property that
14 was rezoned in Worthington or worked on behalf
15 of a client that was rezoning property in the
16 city of Worthington?

17 A. I personally have not.

18 Q. Have you ever worked for the City of
19 Worthington on a planned unit development
20 rezoning project?

21 A. I personally have not.

22 Q. Have you ever personally rezoned
23 property anywhere in the state of Ohio?

24 MR. INGRAM: Objection to form.

1 A. I personally have not.

2 Q. Have you represented a private landowner
3 in a rezoning process in the state of Ohio?

4 MR. INGRAM: Objection to form.

5 A. Yes.

6 Q. When?

7 MR. INGRAM: Same objection.

8 A. I cannot recall sitting here. I would
9 have to go back and look at project records to
10 determine that.

11 Q. How many times would you say you've
12 represented a private landowner through a
13 rezoning process?

14 A. I can't recall sitting here. I'd have
15 to go back and look at it. Under 10.

16 Q. When was the last time to the best of
17 your recollection?

18 A. I can't recall sitting here. I have to
19 look into that. Not in the last three years,
20 certainly.

21 Q. would you agree that through your review
22 of these documents and watching the videos and
23 whatnot that the city and its various boards and
24 commissions did consider the comprehensive plan,

1 the 2005 strategetic updates, the UMC focus area
2 from 2014, the bicycle and pedestrian plan of
3 2019, and the park master plan of 2017?

4 MR. INGRAM: Objection to form.

5 A. I would say that the planning commission
6 highly disregarded most of those plans.

7 Q. So your position is they did not
8 consider those plans?

9 A. They considered -- if they considered
10 them, which they did not seem to, they
11 considered them very erroneously and gave a
12 credibly flimsy and nonsubstantial reasoning for
13 a lot of the input at the hearing that I
14 watched. There was some specific input, and
15 there was a lot of input that was, generally I
16 would characterize it as, I just don't like it.

17 Q. What specific input do you recall?

18 A. I just don't think this is right for
19 this site. I just don't like how it -- I don't
20 like where the buildings are. I don't like the
21 height. I don't like -- they just said they
22 didn't like it, which is insubstantial for a
23 planning review in my opinion.

24 Q. Thank you. We'll come back to that in a

1 second.

2 I think you testified, and correct me if
3 I'm wrong, there was some specific input that
4 was provided?

5 A. There was.

6 Q. What was that specific input?

7 A. There was concern over linking roads to
8 the existing streets, which I might point out is
9 directly opposite of what was recommended in the
10 2014 update. There was concern about the
11 overall number of unit count. And there was
12 concern about open space, the desire for more
13 open space.

14 Q. Do any of the -- well, strike that.

15 Does the 2014 focus area plan set forth
16 a specific objective open space number?

17 A. It sets forth a specific objective to
18 protect the Tucker Creek and then to integrate
19 overall open space within the development
20 without a specific target number.

21 Q. You begin discussing some of what you
22 heard from the planning and zoning commission,
23 and you categorized it as I just don't like it.
24 Is that an accurate description?

1 A. That is how I would characterize a lot
2 of what was said by the members.

3 Q. You then went on, I believe, to say, at
4 least I heard part of it, some people didn't
5 like where the buildings were placed. Do you
6 recall that?

7 A. Yeah. It was, again, very nebulous. It
8 is basically exactly opposite of how as a
9 planning professional I advise anyone on a board
10 that I am staffing to answer a question, and how
11 as a volunteer I've been advised to answer a
12 question. We're advised to give very specific
13 reasons that tie directly into your guiding
14 documents and not speculate and/or express our
15 personal opinions without having a solid reason,
16 and that's what I felt was happening a lot at
17 that meeting.

18 Q. You would agree that the staff report
19 did give a specific concern about the unit
20 counts on the mixed use piece, right?

21 MR. INGRAM: Objection.
22 Mischaracterizes this witness's prior testimony.

23 A. I agree it did give -- it did state a
24 concern. I don't agree that that is an accurate

1 interpretation of this document.

2 Q. And you don't agree with the concern, I
3 assume, right?

4 A. I don't agree with the concern.

5 Q. Do you think in your professional
6 opinion that the 2014 focus area plan should
7 provide specific densities for the mixed use or
8 a specific acreage or percentage of greenspace?

9 MR. INGRAM: Objection. Calls for
10 speculation.

11 A. I think that the way that it was handled
12 was accurate and the way -- or advisable in the
13 way that a planning document can set up a form
14 for mixed use. Mixed use is hard to prescribe.
15 Involves market conditions and site conditions.
16 And by setting up an overall framework, it is
17 more successful in leading to a quality outcome.
18 Whereas, the individual districts that were
19 prescribed as transition districts --
20 residential districts to transition into the
21 existing residential I understand why they
22 prescribed the density in order to satisfy that
23 land use continuum from a dense urban frontage
24 from a less dense situation that would mirror

1 what was next to it.

2 Q. And you would agree from a planning
3 perspective that not prescribing specific
4 densities for the mixed use portion or specific
5 greenspace numbers allows some flexibility when
6 considering a specific application, right?

7 MR. INGRAM: Objection. Misstates this
8 witness's prior testimony.

9 A. I would say it allows flexibility, and
10 it also allows the form to be the most -- the
11 main focus of the development review which for
12 my practice and for most of the cities that I've
13 worked with -- all the cities in recent times
14 has been a primary concern of their development
15 process.

16 Q. Would you agree that every -- that
17 different local governments have different
18 rezoning processes?

19 MR. INGRAM: Objection. Calls for
20 speculation. Ambiguous and vague.

21 A. I am aware of several different
22 municipalities zoning processes, and yes, they
23 have some different elements to each.

24 Q. And I'm curious. You've testified

1 earlier you've done some out-of-state work. Do
2 you find differences outside of Ohio than you
3 would here in central Ohio?

4 MR. INGRAM: Same objections.

5 A. I have, yet surprisingly not very
6 different.

7 Q. That was a legitimate -- I was very
8 curious about that.

9 A. Depends on the state, but oftentimes not
10 very different.

11 Q. Sure. And you would agree every local
12 government has different zoning classifications
13 and different uses, land uses under those
14 classifications and varying degrees of
15 specificity in their comprehensive plans, right?

16 MR. INGRAM: Objection. Calls for
17 speculation, ambiguous, incomplete hypothetical.

18 A. I can say just for the communities that
19 I've worked in that there have been
20 distinctions.

21 Q. You indicate in your report that the
22 process should be collaborative, right?

23 A. (Nods head).

24 Q. Between the developer and the city?

1 A. Yes.

2 Q. Do you know what collaboration or what
3 discussions city staff had with Lifestyle?

4 A. I'm not aware of the full breadth of
5 those. What I am aware of is the fact that at
6 the planning commission in a circumstance that
7 in my entire, you know, 26 now years of
8 experience would indicate is the exact time that
9 a tabling would occur after a discussion in the
10 early stages, a conceptual stage that was even
11 mentioned several times, though different cities
12 call that different things, of a PUD that you
13 would absolutely table that application by the
14 request of the applicant in order to facilitate
15 the interactive process with staff by stopping
16 that and then effectively creating a situation
17 where the ARB had to deny it as well because
18 there was effectively nothing to table. You've
19 cut off the opportunity for staff to have that
20 interaction with the applicant instead of
21 promoting that which is essentially what a PUD
22 is all about. Whether you agree or disagree
23 with the provisions of the PUD process, that
24 central tenant of a PUD is it has to be

1 collaborative throughout the entire process.

2 Q. But you're not aware of what
3 collaboration happened before that point, right?

4 A. Only from what I read in the complaint.

5 Q. Because you didn't talk to anyone from
6 Lifestyle or the city, right?

7 A. Correct.

8 Q. Are you aware that Lifestyle's previous
9 proposal was tabled to make changes per staff
10 request?

11 MR. INGRAM: Objection. Assumes facts
12 not in evidence.

13 A. Only aware of what I read in the staff
14 report.

15 Q. Is that what the staff report said?

16 MR. INGRAM: Same objection.

17 A. That is what the staff report indicated,
18 yes.

19 Q. Do you have any reason to --

20 A. I will clarify I don't recall it
21 actually saying tabling, but the staff report
22 referred to an earlier application.

23 Q. And it referred to an earlier
24 application where feedback was given by the city

1 staff to the developer that led the developer to
2 amend the plan, correct?

3 MR. INGRAM: Objection.
4 Mischaracterizes the evidence in the record,
5 Counsel. And assumes facts not in evidence.
6 Objection to form.

7 You can answer if you can.

8 A. The only element that I'm aware of was
9 the request for additional office which
10 according to the staff report accommodated and,
11 you know, comparing the plans clearly.

12 Q. And that was the only feedback that you
13 recall seeing for that original?

14 A. For the original that's the only
15 feedback I recall seeing.

16 Q. Are you aware of the city taking any
17 action to rezone this property outside of
18 Lifestyle's proposals?

19 A. No.

20 Q. I think you've indicated a couple times
21 and you, I believe, indicate in your report
22 there was little substance for the
23 recommendation of the denial by the staff,
24 right?

1 A. Yes.

2 Q. I'm going to have you turn back to what
3 we've marked as Exhibit 141, which is the staff
4 memorandum and the Lifestyle proposal, and I'll
5 have you turn specifically to what's labeled in
6 the bottom right-hand corner page 47 of 201,
7 please. Let me know when you're there.

8 A. I am there.

9 Q. Do you see the bold Staff
10 Comments/Analysis?

11 A. The words Staff Comments/Analysis?

12 Q. Yes.

13 A. Yes.

14 Q. First sentence under that heading you
15 would agree that staff has indicated in the
16 report that they've compared the materials to
17 the language in the 2014 comprehensive plan
18 update?

19 A. They have indicated that in this report,
20 yes.

21 Q. And they've included a list of
22 discussion topics that they then discuss in the
23 report which includes the residential density,
24 heights, housing types, mix of land uses,

1 greenspace, open space, park land, traffic, and
2 bike and pedestrian accommodations. Do you see
3 that?

4 A. I do.

5 Q. You would agree that in discussing the
6 residential density staff provided a history of
7 the proposals and indicated that the proposal
8 was still too dense from their perspective. Is
9 that a fair characterization of what staff
10 states?

11 MR. INGRAM: Objection. Calls for
12 speculation.

13 A. Yes. They believe -- staff believes
14 that density should be reduced.

15 Q. What to you is not clear about the need
16 to reduce housing density?

17 A. There is no requirement within that plan
18 for density, and the form of the proposal
19 creates its own density limit. There is no
20 indication in any of that planning, which was a
21 year-long, robust community process, that there
22 needs to be or is a density limit in that area.
23 And the entire purpose of that was to create a
24 flexible mixed use district. So there is no --

1 absolutely no reason why this plan in any way
2 supports lowering density or creates a situation
3 whereby density would have to be lowered to
4 conform to the 2014 plan.

5 MR. INGRAM: And for purposes of the
6 record --

7 A. I pointed to the 2014 plan.

8 MR. INGRAM: -- the witness is pointing
9 to Exhibit 1.

10 MR. ASHRAWI: Thank you.

11 Q. You would agree that the staff also
12 indicated the need for additional housing types
13 including single-level living "which is one of
14 the key things we have heard from our residents
15 that they would like to see offered in the
16 community". Do you agree with that statement?

17 A. That they said that?

18 Q. Yes.

19 A. Yes, the staff said that.

20 Q. What is unclear about the desire for
21 additional options for single-level living?

22 A. One of the themes that runs through the
23 staff report is that they are interpreting
24 the -- they're interpreting what they believe

1 they have heard from the community outside of
2 this robust community development process that
3 reviewed the 2014 adopted plan, and speculating
4 on what they think are the most important
5 elements that they may or may not have heard by
6 some portions of the community.

7 As a professional reviewing plans, I
8 have to look to the most robust public process
9 that was taken place and the resulting
10 documentation that came out of that as the
11 guide. Any individual can have any concern in
12 any community, and you know, in a community of
13 14 and a half thousand people there's no way to
14 know whether that housing option to me was a
15 significant portion and/or whether it should be
16 accommodated here or elsewhere.

17 In order to understand that, I would
18 look at the overall comprehensive plan, the
19 overall set of focus areas as a staff planner,
20 and I would look on this site to this guiding
21 document. And I would try to understand the
22 greater balance of land uses throughout the
23 community and not ascribe any specific desire
24 only to one spot if that spot, in fact, was

1 outlined very clearly in a focus area plan.

2 Q. Safe to say you disagree with staff's
3 comments as part of this proposal?

4 A. I disagree with the comments that don't
5 align with the 2014 strategetic analysis,
6 particularly ones that specifically cite what
7 the community desires due to the fact that this
8 is the document that was produced by a
9 community -- robust community input.

10 In my interpretation as a planner, the
11 2014 strategetic analysis is what the community
12 desires until it's adopted or replaced through
13 another robust process that would be -- I don't
14 know if it has to be a year, but it certainly
15 has to involve a great deal of public input and
16 a series of public meetings and recommendations
17 by both the architectural review board and the
18 planning commission before council could act on
19 a replacement for that.

20 Q. So I'm trying to understand how you go
21 exclusively from the 2014 focus area to an
22 acceptable plan where we've just discussed there
23 are no objective greenspace requirements or
24 density requirements for a mixed use. So let me

1 ask you in your professional capacity if
2 Lifestyle's proposal included no residential
3 units in the mixed use area because there's no
4 density requirement whatsoever, that would
5 conform to the plan, right?

6 MR. INGRAM: Objection. Calls for
7 speculation. Incomplete hypothetical.

8 A. If Lifestyles create a building
9 structure that was in conformance with this plan
10 and included the uses that are outlined in this
11 plan, it would be in conformance. What the
12 question is, is what is proposed is in
13 conformance. We could speculate a whole manner
14 of things that could be proposed, and that's the
15 essence of both the guiding plan and the PUD.
16 And the process of getting to those specific
17 outcomes in a PUD is what's happened every time
18 a PUD has been utilized -- well, almost every
19 time a PUD is utilized in almost every
20 community.

21 One of the challenges of a PUD is, of
22 course, it is a bit burdensome to get to those
23 final specific elements with the development
24 text and the development plan and then

1 subsequent need to amend and update any of those
2 elements, which is why a lot of communities
3 don't use PUDs anymore, and they've gone to more
4 form-based zoning which is not available in
5 Worthington.

6 If we were advising on this site in
7 another community, we would probably advise them
8 to actually rezone the property with a
9 form-based approach, and then you would have
10 those specific standards. You wouldn't have to
11 go through the iterative process that
12 Worthington's code dictates.

13 Q. So this is not zoned for form-based
14 zoning, right?

15 A. It is not.

16 Q. And my question is generally -- I'm
17 generally -- genuinely curious what staff and
18 the city's role in this. If you're telling me
19 there's any number of proposals that in your
20 opinion would conform to this, what is staff and
21 the city's role in adopting a PUD then?

22 MR. INGRAM: Objection. Calls for
23 speculation. Vague. Ambiguous.

24 You can answer to the extent you can.

1 A. I don't know what the Worthington
2 staff's role is. I can tell you what my role
3 has been, and I helped adopt the, at that point,
4 1600-acre New Albany Company PUD in the Village
5 of New Albany back when it was a village. And
6 our role was rigorous, and it was highly
7 involved, and we worked in an incredibly
8 repetitive and iterative fashion throughout an
9 extensive public process that took the base
10 plans that we already had in place, applied
11 those through architectural and planning
12 evaluation, determined all of the specific
13 elements that were going to take place in the
14 PUD. In fact, it's one of the most rigorous
15 times a planner can be involved.

16 And I don't believe that that has taken
17 place from what I'm reading in the Worthington
18 case in that the staff report mostly does a
19 light evaluation of a conceptual plan based on
20 this adopted 2014 plan in a way that I don't
21 think syncs, and relies extremely heavily on
22 speculation about what the community wants in
23 absence of looking to what was established
24 through a year-long community process.

1 Q. Was there -- when you were working for
2 the Village of New Albany, you said that the PUD
3 process was one of the times that a planner
4 could most rigorously be involved in the PUD
5 process, right?

6 A. Absolutely.

7 Q. That's because there's flexibility in
8 density, uses, forms, et cetera, right?

9 A. Correct.

10 Q. So when you were working on that
11 1600-acre PUD, was there a comprehensive plan
12 that you were relying on?

13 A. There was.

14 Q. Did it still require a rezoning to PUD?

15 A. It did.

16 Q. Was the city in favor of the final
17 product?

18 A. You have to -- can you rephrase?

19 MR. INGRAM: Objection. Form.

20 Q. The city eventually -- the city council
21 eventually had to approve that PUD, right?

22 A. That's correct.

23 Q. How long did that process take?

24 A. Years.

1 Q. And there were iterations of the plan,
2 right?

3 A. There were iterations along the way, and
4 in every, every step of the way the plan was
5 moved forward or tabled by every single board
6 that ever heard it, and it was far, far more
7 complex than what this is. And every board was
8 willing to allow staff to have that latitude to
9 keep talking to the applicant and to figure out
10 the very extensive details that were necessary
11 in order to implement it.

12 And on a simpler PUD that's a fraction
13 of the acres that seems like it would be the
14 least thing that you would do, is allow the
15 staff to continually -- that's my alarm. Excuse
16 me.

17 (Pause in the proceedings).

18 BY MR. ASHRAWI:

19 Q. Mr. Sudy, when you were working on the
20 PUD in New Albany, was there discussion about
21 residential density?

22 A. There was.

23 Q. And there was some back and forth on
24 changes in density, right?

1 A. There were.

2 Q. And there were discussions on the mix of
3 housing options in that area, right?

4 A. There were.

5 Q. And the final and end product that was
6 approved by city council was less dense than
7 what it was proposed originally, right?

8 MR. INGRAM: Objection. Assumes facts
9 not in evidence. And this whole line of
10 questioning is entirely irrelevant. You can
11 answer to the extent you can.

12 A. Well, there's multiple parts to that. A
13 part of it was approved that was less dense, and
14 then it was modified to be much more dense.

15 Q. What part was that?

16 A. Village center.

17 Q. Have you looked at any other PUD
18 rezonings that the City of Worthington has
19 undertaken?

20 A. I have not.

21 Q. Are you aware of the -- if the city has
22 undertaken any other PUD rezonings?

23 A. I am not.

24 Q. So you don't know what process the city

1 has utilized in the past for other PUD
2 rezonings?

3 MR. INGRAM: Objection. Misstates this
4 witness's prior testimony.

5 A. I know it's outlined in the code which
6 is very similar to the other PUD. I would hope
7 that they would conform to that process.

8 Q. Is there a requirement for continued
9 staff engagement in the code after an
10 application has been filed?

11 A. I can't speak to that. It is such a
12 foregone conclusion and especially for PUDs.

13 Q. But you don't know whether that's in the
14 zoning code?

15 A. I do not know.

16 Q. Are you aware of the other proposals,
17 any other PUD proposal or development proposal
18 that have been submitted to the city for this
19 site prior to Lifestyle's?

20 A. Am I aware of any other PUD proposals?
21 I am not.

22 Q. Are you aware of any other proposals or
23 considerations for the subject property's
24 development prior to Lifestyle's?

1 A. I'm aware that there was a proposal, but
2 I'm very unfamiliar with it.

3 Q. So you don't know any of the details of
4 that proposal?

5 A. All I know is it was for a grocery
6 store, and that's all I know.

7 Q. You mention in your report that
8 Lifestyle was cut off from interactive and
9 timely review. My question is related to the
10 timely review portion. Are you suggesting that
11 there was an untimely review of something?

12 A. It's very hard to define the specific
13 elements of a process from the outside. So you
14 have to look for indicators of what that might
15 be. And particularly at the planning commission
16 hearing where the applicant seemed very eager to
17 understand any of the suggestions that were
18 concrete that were offered, that would indicate
19 that in the ensuing time between their earlier
20 proposal there had been very little guidance
21 given to them, and that is -- while developers
22 can take whatever time they want to move forward
23 and amend an application, you know, once that
24 process is in place as a city staff or an acting

1 city staff member, we feel it incumbent upon
2 ourselves to give feedback as quickly and as
3 immediately as we can. So that's as much as I
4 can tell from the indications of the outcomes.

5 And then certainly after that, after
6 being denied without a tabling, you know, then
7 they're basically put in a situation where they
8 have to move forward with an existing denied
9 application and have no forward progress in that
10 amount of time until they go through the council
11 process.

12 Q. Thank you for that explanation. I just
13 wanted to clarify whether there was a certain
14 timeline that was not met by code. So just to
15 clarify is that -- is that not the case?

16 MR. INGRAM: Objection. Asked and
17 answered.

18 A. Yeah. I can't speak to the code aspect.

19 Q. Who authored and wrote up this report?

20 A. I did.

21 Q. Did you receive any assistance from
22 anyone?

23 A. I did not.

24 Q. Anyone type it for you?

1 A. No. I wish somebody would have.

2 Q. Are there other drafts of this report?

3 A. Probably.

4 Q. Would those drafts be contained in your
5 working file?

6 A. Yes.

7 Q. Are there redline versions of this
8 report?

9 A. Clarify. Can you clarify?

10 Q. Sure. Have you exchanged or have you
11 redlined your report? You know, word provides
12 an opportunity to redline, make redline changes.

13 A. I can't say as I necessarily did a track
14 change.

15 Q. Would anyone else have redlined this
16 report?

17 A. No.

18 Q. Have you ever seen a rezoning request be
19 denied?

20 A. Yes.

21 Q. In your position as the chair of the
22 Italian Village Commission, has that board ever
23 recommended a denial of a rezoning?

24 A. I can't speak for the whole history of

1 the board. In the last 20 years, you know, I
2 don't know if we have. We may not have. I'd
3 have to look back at the record. I don't know.
4 We try to be very collaborative and hopefully
5 get it to a resolution. I can't say for certain
6 honestly.

7 MR. ASHRAWI: why don't we take a very
8 short break and I may be wrapped up. I'm going
9 to try to extend this as long as I can.

10 (Recess taken).

11 BY MR. ASHRAWI:

12 Q. Mr. Sudy, you would agree with me that
13 there are four different zoning classifications
14 currently on the subject property. Is that
15 right?

16 A. Yes, I believe that's true. I have to
17 look at that.

18 Q. I'll actually direct your attention to
19 what's previously been marked as Exhibit 5.
20 This is a document you said you hadn't seen
21 before. I thought this was what you referenced
22 in your report when you noted reviewing
23 materials from the city's website, 1033 High
24 Street?

1 A. This is not clear to me this is from the
2 website. Is this -- can you explain the origin
3 of this document?

4 Q. Sure. It is on the website under this
5 heading. You can sort of see the Worthington
6 emblem that's been --

7 A. Gotcha.

8 Q. -- Xeroxed probably several times. But
9 in any event I'll ask you just to turn to the
10 second page or the back of the front page, and
11 this document lists out the zoning districts for
12 the property. Can you just confirm based on
13 your understanding those are the zoning
14 districts that you understand to be on the
15 property?

16 A. I need to look at the zoning map again
17 to verify that those are the actual names of the
18 zoning districts. I'm not familiar with the
19 code to that extent I reviewed based on...

20 Q. Let me ask you this. You would agree
21 that the majority of the property is zoned this
22 S1 special district. Do you recall that?

23 A. Let me look at the -- I believe it was
24 outlined here in this plan. I'm looking at the

1 comprehensive plan so this could be
2 significantly out of date. Maybe it's in the --
3 oh, it's in this plan. 2014 plan. So according
4 to the zoning map provided in the 2014
5 strategetic analysis the majority of the site is
6 S1.

7 Q. And you reviewed the permitted uses
8 under S1, right?

9 A. That's correct.

10 Q. And you would agree that examples of
11 permitted uses include recreational facilities,
12 government buildings and service buildings. Is
13 that -- based on your recollection, is that
14 accurate?

15 A. I'm assuming that the -- by your -- this
16 review that the city has accurately represented
17 what is in their zoning code. I would have to
18 see a copy of the actual zoning code in order to
19 verify that that was, in fact, the correct uses
20 that they've listed.

21 Q. Let me ask a more general question. You
22 would agree that the S1 district allows some
23 uses on that property, right?

24 A. Yes.

1 Q. Okay.

2 MR. ASHRAWI: Those are all the
3 questions I have. Thank you for your time
4 today, Mr. Sudy.

5 THE WITNESS: Absolutely.

6 COURT REPORTER: Read and sign?

7 MR. INGRAM: Yes.

8 COURT REPORTER: Ordering?

9 MR. ASHRAWI: Yes, please.

10 COURT REPORTER: Copy?

11 MR. INGRAM: Yes, please.

12 (Signature not waived.)

13 --O--

14 Thereupon, the testimony of December
15 19, 2023, was concluded at 4:18 p.m.

16 --O--

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1 CERTIFICATE

2 STATE OF OHIO :
3 COUNTY OF FRANKLIN : SS:

4 I, Julia Lamb, RPR, CRR, a
5 stenographic court reporter and notary public in
6 and for the State of Ohio, duly commissioned and
7 qualified, do hereby certify that the
8 within-named JASON SUDY was first duly sworn to
9 testify to the truth, the whole truth, and
10 nothing but the truth in the cause aforesaid;
11 that the testimony then given was taken down by
12 me stenographically in the presence of said
13 witness, afterwards transcribed; that the
14 foregoing is a true and correct transcript of
15 the testimony; that this deposition was taken at
16 the time and place in the foregoing caption
17 specified.

18 I do further certify that I am not a
19 relative, employee or attorney of any of the
20 parties hereto; that I am not a relative or
21 employee of any attorney or counsel employed by
22 the parties hereto; that I am not financially
23 interested in the action; and further, I am not,
24 nor is the court reporting firm with which I am
affiliated, under contract as defined in Civil
Rule 28(D).

In witness whereof, I have hereunto
set my hand at Columbus, Ohio, on this 4th day
of January, 2024.

20 *Julia Lamb*
21 Julia Lamb, RPR, CRR
22 Notary Public, State of Ohio

23 My commission expires: 10-10-27

24

Exhibits			A
Exhibit 1 51:2,3 56:2 66:8 67:4 70:4 71:1 76:17 102:9	15.95 60:14	3	ability 77:24 78:18 85:24
Exhibit 5 77:2 115:19	151 37:23	3 80:6	absence 107:23
Exhibit 7 72:18 73:5	15th 79:15	3.72 62:3	absolute 82:15
Exhibit 140 7:14,18 33:2 36:8	1600-acre 107:4 108:11	4	absolutely 13:24 84:1 97:13 102:1 108:6 118:5
Exhibit 141 37:8,12, 13,22 59:23 100:3	19 118:15	40 45:24	accept 66:19
Exhibit 142 41:11,17	1998 16:24	47 100:6	acceptable 6:5 84:7 104:22
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